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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

CHET MICHAEL WILSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PROFESSIONAL CREDIT SERVICE,

Defendant.

Case No. 6:24-cv-01826-MTK

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S CLASS ACTION
COMPLAINT**

Defendant, Professional Credit Service ("PCS"), through counsel and pursuant to the Federal Rules of Civil Procedure, hereby submits its Answer and Affirmative Defenses to the Class Action Complaint filed by plaintiff, Chet Michael Wilson ("plaintiff"), and states:

1. PCS admits plaintiff purports to bring this action pursuant to the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*, but denies any violations, liability, damages or wrongdoing under the law, and further denies that plaintiff can satisfy the requirements of Fed. R. Civ. P. 23. Except as specifically admitted, PCS denies the allegations in ¶ 1.

2. PCS denies the allegations in ¶ 2.

3. PCS denies the allegations in ¶ 3.

Jurisdiction and Venue

4. PCS denies the allegations in ¶ 4 as calling for a legal conclusion.
5. Upon information and belief, PCS admits venue is proper. Except as specifically admitted, PCS denies the allegations in ¶ 5 as calling for a legal conclusion.
6. PCS denies the allegations in ¶ 6.

Parties

7. PCS denies the allegations in ¶ 7 for lack of knowledge or information sufficient to form a belief therein.
8. PCS denies the allegations in ¶ 8 as calling for a legal conclusion.
9. PCS admits the allegations in ¶ 9.
10. PCS denies the allegations in ¶ 10 as calling for a legal conclusion.
11. PCS denies the allegations in ¶ 11 as written.

Factual Allegations

12. PCS denies the allegations in ¶ 12 for lack of knowledge or information sufficient to form a belief therein.
13. PCS admits the allegations in ¶ 13.
14. PCS denies the allegations in ¶ 14.
15. PCS admits the allegations in ¶ 15.
16. PCS denies the allegations in ¶ 16.
17. PCS denies the allegations in ¶ 17.
18. PCS denies the allegations in ¶ 18.
19. PCS admits the allegations in ¶ 19.
20. PCS denies the allegations in ¶ 20.
21. PCS denies the allegations in ¶ 21.
22. PCS denies the allegations in ¶ 22.

23. PCS denies the allegations in ¶ 23.

24. PCS denies the allegations in ¶ 24.

25. PCS denies the allegations in ¶ 25.

26. PCS denies the allegations in ¶ 26.

27. PCS denies the allegations in ¶ 27 as written.

28. PCS denies the allegations in ¶ 28 as written.

29. PCS denies the allegations in ¶ 29.

30. PCS denies the allegations in ¶ 30 for lack of knowledge or information sufficient to form a belief therein.

31. PCS denies the allegations in ¶ 31.

32. PCS denies the allegations in ¶ 32.

Class Action Allegations

33. PCS admits the plaintiff purports to bring this action as a class action, but PCS denies any violations, liability, damages or wrongdoing under the law, and further denies the plaintiff can meet the requirements of Fed. R. Civ. P. 23. Except as specifically admitted, PCS denies the allegations in ¶ 33.

34. PCS admits that plaintiff seeks to exclude from the Class those individuals and entities listed in ¶ 34 but denies the allegations and further denies that this lawsuit meets the requirements of a class action.

35. PCS denies the allegations in ¶ 35 and further denies that this lawsuit meets the requirements of a class action.

36. PCS denies the allegations in ¶ 36 and further denies that this lawsuit meets the requirements of a class action.

37. PCS denies the allegations in ¶ 37 and further denies that this lawsuit meets the requirements of a class action.

38. PCS denies the allegations in ¶ 38 and further denies that this lawsuit meets the requirements of a class action.

39. PCS denies the allegations in ¶ 39 and further denies that this lawsuit meets the requirements of a class action.

40. PCS denies the allegations in ¶ 40 and further denies that this lawsuit meets the requirements of a class action.

41. PCS denies the allegations in ¶ 41 and further denies that this lawsuit meets the requirements of a class action.

42. PCS denies the allegations in ¶ 42 and further denies that this lawsuit meets the requirements of a class action.

43. PCS denies the allegations in ¶ 43 and further denies that this lawsuit meets the requirements of a class action.

44. PCS denies the allegations in ¶ 44 and further denies that this lawsuit meets the requirements of a class action.

45. PCS denies the allegations in ¶ 45 and further denies that this lawsuit meets the requirements of a class action.

46. PCS denies the allegations in ¶ 46 and further denies that this lawsuit meets the requirements of a class action.

47. PCS denies the allegations in ¶ 47 and further denies that this lawsuit meets the requirements of a class action.

48. PCS denies the allegations in ¶ 48 and further denies that this lawsuit meets the requirements of a class action.

49. PCS denies the allegations in ¶ 49 and further denies that this lawsuit meets the requirements of a class action.

50. PCS denies the allegations in ¶ 50 and further denies that this lawsuit meets the requirements of a class action.

51. PCS denies the allegations in ¶ 51 and further denies that this lawsuit meets the requirements of a class action.

52. PCS denies the allegations in ¶ 52 and further denies that this lawsuit meets the requirements of a class action.

53. PCS denies the allegations in ¶ 53 and further denies that this lawsuit meets the requirements of a class action.

54. PCS denies the allegations in ¶ 54 and further denies that this lawsuit meets the requirements of a class action.

55. PCS denies the allegations in ¶ 55 and further denies that this lawsuit meets the requirements of a class action.

56. PCS denies the allegations in ¶ 56 and further denies that this lawsuit meets the requirements of a class action.

57. PCS denies the allegations in ¶ 57 and further denies that this lawsuit meets the requirements of a class action.

58. PCS denies the allegations in ¶ 58 and further denies that this lawsuit meets the requirements of a class action.

59. PCS denies the allegations in ¶ 59 and further denies that this lawsuit meets the requirements of a class action

60. PCS denies the allegations in ¶ 60 and further denies that this lawsuit meets the requirements of a class action.

61. PCS denies the allegations in ¶ 61 and further denies that this lawsuit meets the requirements of a class action.

Count I

[Alleged] Violation of 47 U.S.C. § 227(b)(1)(A)(iii)

- 62. PCS reasserts the foregoing as if fully stated herein.
- 63. PCS denies the allegations in ¶ 63.
- 64. PCS denies the allegations in ¶ 64.

Prayer for Relief

PCS denies the allegations in the unnumbered paragraph and further denies that plaintiff and/or the putative class are entitled to the damages and relief requested in the unnumbered paragraph and its subparagraphs a-j.

Demand for Jury Trial

PCS admits plaintiff has demanded a jury trial, but denies any violations, liability, damages or wrongdoing under the law. Except as specifically admitted, PCS denies the allegations in the unnumbered paragraph.

AFFIRMATIVE DEFENSES

- 1. To the extent that any violations are established, which is denied, any such violations were not intentional. Specifically, PCS has established and implemented reasonable practices and procedures to effectively prevent a violation of the TCPA.
- 2. PCS denies any liability; however, regardless of liability, plaintiff has suffered no actual damages as a result of PCS's purported violations.
- 3. One or more claims asserted by plaintiff are barred by the statute of limitations, laches, estoppel, waiver and/or unclean hands.
- 4. Assuming plaintiff suffered any damages, which is denied, plaintiff has failed to mitigate his damages or take other reasonable steps to avoid or reduce his damages.

5. Any harm suffered by plaintiff was legally and proximately caused by persons or entities other than PCS and were beyond the control or supervision of PCS or for whom PCS was and is not responsible or liable.

6. One or more of any telephone calls made to plaintiff were not made to a wireless, *i.e.*, cellular, telephone.

7. Plaintiff consented and authorized calls to the phone number in question.

8. The phone calls made to plaintiff are exempt from TCPA liability under various provisions and regulations, including: 47 U.S.C. § 227(b)(1)(B), 47 U.S.C. § 227(b)(2)(B), 47 U.S.C. § 227(c)(5)(C), 47 C.F.R. § 64.1200(a), and 47 C.F.R. § 64.1200(c)

9. The equipment used to make the telephone calls at issue is not covered by or subject to the TCPA.

10. To the extent the calls at issue were to plaintiff's telephone, as alleged, plaintiff provided consent to receive those calls.

11. To the extent plaintiff was not the subscriber of the phone at the time of the calls, plaintiff has no standing to assert the claim.

12. To the extent plaintiff was not the intended recipient of the alleged calls, plaintiff has no standing to assert the claims.

13. Plaintiff has failed to state a claim against PCS upon which relief may be granted.

14. Plaintiff's claims are subject to mandatory and binding arbitration and a class action waiver.

15. PCS reserves the right to add to or amend these Affirmative Defenses to the extent facts supporting such defenses are developed during the course of discovery.

WHEREFORE, Defendant, Professional Credit Service, respectfully requests the Court dismiss this action with prejudice and grant it any other relief the Court deems appropriate.

DATED: December 19, 2024

COSGRAVE VERGEER KESTER LLP

s/ *Timothy J. Fransen*

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing **DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S CLASS ACTION COMPLAINT** on the date indicated below by:

- ☐ mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- ☐ hand delivery,
- ☐ facsimile transmission,
- ☐ overnight delivery,
- ☒ electronic filing notification.

If served by facsimile transmission, attached to this certificate is the printed confirmation of receipt of the documents generated by the transmitting machine. I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorney at the address listed below:

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DATED: December 19, 2024

s/ Timothy J. Fransen
Timothy J. Fransen